IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-21

FRANK ALONZO, WILLIAM DENNEY, SCOTT DUBS, STEVE EDWARDS, PAUL FAWVER, and PAUL HALM,

Petitioners,

vs.

VILLAGE OF ROMEOVILLE,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTION PRESENTED

Whether an amendment of an ordinance by a municipality making its residency requirement more stringent presents an issue of *ex post facto* legislation which this Court should review by writ of certiorari.

ORDINANCES INVOLVED

Ordinance, Village of Romeoville, Chapter 1, Article 14, Section 14-1

POLICE AND FIRE RESIDENCY REQUIREMENTS

BE IT ORDAINED BY THE PRESIDENT AND MEMBERS OF THE BOARD OF TRUSTEES OF THE VILLAGE OF ROMEOVILLE, WILL COUNTY, ILLINOIS, that:

Section 14-1: All policemen other than the Chief shall reside within 15 miles of the corporate limits of the Village of Romeoville.

Section 14-2: All firemen other than the Chief shall reside within 3 miles of the corporate limits of the Village of Romeoville.

Section 14-3: The Police Chief and the Fire Chief shall be residents of the Village of Romeoville within six (6) months after their appointment as Chief.

Section 14-4: There shall be no residency requirement to be eligible to take an examination for original appointment to either the Police or the Fire Department.

Ordinance, Village of Romeoville, Chapter 1, Article 14

AN ORDINANCE AMENDING POLICE AND FIRE RESIDENCY REQUIREMENTS

BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF ROMEOVILLE, WILL COUNTY, ILLINOIS, THAT CHAPTER 1, ARTICLE 14, SHALL BE AMENDED AS FOLLOWS:

Section 14-1: All commissioned police officers of the Village shall reside within the corporate limits of the Village of Romeoville, Will County, Illinois. Any present

commissioned officer who resides outside the corporate limits of the Village shall be required to be a resident of the Village of Romeoville within two years after the date of the adoption of this ordinance. All probationary police officers shall be required to reside within the corporate limits of the Village on the date such officer receives his commission.

Section 14-5: A commissioned police officer of the Village shall not be eligible for promotion to the next highest rank unless the officer resides within the corporate limits of the Village.

STATEMENT OF THE CASE

In January, 1975, the Village of Romeoville enacted an ordinance which required that its police officers reside within fifteen miles of the municipality's corporate limits. In July, 1977, this ordinance was amended to require that police officers reside within the municipality's corporate limits. The amending ordinance gave police officers a two-year period in which to establish such a residence but required that a residence within the municipality's corporate limits was required for promotion to the next higher rank. Petitioners thereafter filed a suit in the Federal District Court for the Northern District of Illinois asserting that having been police officers of the Village of Romeoville when the prior ordinance was in effect, they acquired vested or contractual rights thereunder upon which the amending ordinance unconstitutionally infringed.

The District Court granted summary judgment to the Village of Romeoville, which decision was affirmed, *per curiam*, by the United States Court of Appeals for the Seventh Circuit. *Alonzo v. Village of Romeoville*, No. 78-2164, decided April 9, 1979.

REASONS FOR DENYING THE WRIT

The proposition that the imposition of a residency requirement by a municipality upon its employees does not raise a federal Constitutional question is supported by all cases at the federal appellate level. Petitioners' contention that rights enjoyed under a municipal ordinance are vested and survive the amendment of that ordinance is directly controverted by a decision of the Illinois Supreme Court, which decision has been affirmed by this Court.

I.

RESIDENCY REQUIREMENTS FOR MUNICIPAL EMPLOYEES DO NOT RAISE CONSTITUTIONAL QUESTIONS.

Andre v. Village of Maywood, 561 F.2d 48 (7th Cir. 1977), *cert. den.* 434 U.S. 1013 (1979), involved, in principle, the same issue as is presented by the instant case. In the *Andre* case, the Court of Appeals for the Seventh Circuit had before it a newly enacted residency requirement for employees of the Village of Maywood. Quite clearly, prior to Maywood's enactment of this residency requirement, nonresidents could be employed by it, and continue to reside outside the municipality's corporate limits.

The original ordinance of the Village of Maywood provided:

> In hiring new employees, preference will be given Maywood residents—all other factors being equal. If qualified Village residents do not apply, *then nonresidents may be employed in any position.* [Emphasis added.]

Andre v. Village of Maywood, 561 F.2d at 50. This ordinance was amended on August 14, 1975, by providing that all department heads and administrative personnel had to establish residences within Maywood within two years, and all other employees, including the police and fire departments, members of which brought suit in *Andre*, must establish residences within four years. 561 F.2d at 49.

The decision in *Andre* reviewed numerous previous opinions, including this Court's opinions in *McCarthy v. Philadelphia Civil Service Commission*, 424 U.S. 645 (1976); *Detroit Police Officers Association v. City of Detroit*, 385 Mich. 519, 190 N.W.2d 97 (1971), appeal dismissed for lack of substantial federal question, 405 U.S. 950 (1972), and concluded that "residency restrictions *imposed* upon municipal employees as a continuing condition of their public employment have been upheld by numerous courts". [Emphasis added]. 561 F.2d at 50. Thus, in *Andre*, municipal employees who had quite properly lived outside the municipality's corporate limits prior to the enactment of the residency requirement were, after such enactment, required to move or lose their jobs. This result was not unique to *Andre*. *Wright v. City of Jackson*, 506 F.2d 400 (5th Cir. 1975); *Hattiesburg Firefighters Local v. Hattiesburg*, 263 So. 2d 767 (Miss. S.C. 1972); *Salt Lake City Firefighters Local v. Salt Lake City*, 22 Utah 2d 115, 459 P. 2d 239 (1969).

There is obviously no practical difference between requiring a municipal employee who had previously been entitled to live anywhere outside the municipality to move within the corporate limits, and the compulsion placed upon an employee who had previously been permitted to reside within fifteen miles of the municipality to move within the corporate limits. Petitioners here,

however, would have this Court find that the latter ordinance creates vested rights. They cite no authority for this.

In the case of *Detroit Police Lieutenants and Sergeants Association v. Detroit*, 56 Mich. App. 617, 224 N.W. 2d 728 (1974), the court did not enforce a residency requirement against certain police employees who had previously applied for and been granted permission to reside outside of the City of Detroit. However, the court did not hold that enforcement in such an instance would violate the federal Constitution but, rather, that the residency requirement should not be enforced in such an instance as a matter of "equity and good conscience". 56 Mich. App. at 623. This Court should not review by certiorari questions as to what is or is not equitable under varying legislation and factual circumstances.

In *Fraternal Order of Police, Youngstown Lodge No. 28 v. Hunter*, 49 Ohio App. 2d 185, 360 N.E.2d 708 (1975), the court was concerned with the tests to be applied to a residency requirement. The majority held that the imposition of a residency requirement on police officers "must meet the test of 'compelling governmental interests'" in order to survive a constitutional challenge, 49 Ohio App. 2d at 201, whereas the dissent was of the opinion that the test should be whether "such a rule bears a reasonable relation to a valid state purpose", 49 Ohio App. 2d at 215.

To the extent that the *Hunter* case can be interpreted as holding that the imposition of a residency requirement on policemen hired prior to the enactment of such a requirement is retrospective legislation infringing on a vested right in violation of the federal Constitution, it is in error. This argument was struck down in *Andre v. Village of Maywood*, 561 F.2d 48, 51 (7th Cir. 1977), *cert. den.* 434 U.S. 1013 (1979), wherein the court stated:

> Even if [the prior ordinance allowing hiring of non-residents] did create some interest in plaintiffs, that interest would have been *contingent* upon the *anticipated continuance* of the ordinance. *Such an interest does not amount to a vested right.* [Emphasis added.]

Under Illinois law, conditions of public employment set by statute do not rise to the level of contractual vested rights. *Dodge v. Board of Education*, 364 Ill. 547, 5 N.E.2d 84 (1936). Affirming the *Dodge* case, this Court held that such an interpretation does not violate the federal Constitution. *Dodge v. Board of Education*, 302 U.S. 74 (1937). See also *Groves v. Board of Education*, 367 Ill. 91, 95-6, 10 N.E.2d 403 (1937). This Court has held that for terms of employment set forth in a statute to become a vested right, the language of and the circumstances surrounding the legislation must clearly and unequivocally show such a legislative intent. The Court found such in the case of *Indiana ex rel. Anderson v. Brand*, 303 U.S. 95, 105 (1938). However, in the oft-cited *Anderson* case, this Court noted that the legislation in question spoke repeatedly and pointedly of a contract, that the word "contract" appeared several times in the legislation, and that the entire tenor of the act was contractual in nature. Such provisions and terms are obviously lacking from the ordinance of the Village of Romeoville, which is in question here. *Taliaferro v. Dykstra*, 434 F.Supp. 705 (E.D. Va. 1977); *McCann v. Retirement Board*, 331 Ill. 193, 162 N.E. 859 (1928); *Beutel v. Foreman*, 288 Ill. 1060, 123 N.E. 270 (1919); *Blough v. Ekstrom*, 14 Ill. App. 2d 153, 144 N.E.2d 436 (1957).

Petitioners have been unable to produce any federal authority in support of their allegation that they have acquired vested rights which have been violated. They

have also been unable to show any authority in support of their contention that their rights have been violated under Illinois law. All federal authority, and the vast majority of state authority, allows the imposition of residency requirements upon public employees. *Andre v. Village of Maywood*, 561 F.2d 48 (7th Cir. 1977), *cert. den.* 434 U.S. 1013 (1979), cases cited at page 50. It is thus clear that there has been no violation of Petitioners' federal or state rights and that there are no conflicting federal or state decisions on the question presented by this case which would compel the issuance of a writ of certiorari.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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